Supreme Court of the United States

JOHN F. DAVIS, CLERK

OCTOBER TERM, 1969

No. 558

HOUSTON H. FEASTER, individually and as Director, Alabama State Docks Department, and the STATE OF ALABAMA,

Petitioners,

versus

UNITED STATES OF AMERICA and WARREN S. LANE, as Mediator, National Mediation Board,

Respondents.

BRIEF OF THE GEORGIA PORTS AUTHORITY AS AMICUS CURIAE.

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UNITED STATES OF AMERICA and WARREN S. LANE, as Mediator, National Mediation Board,

Respondents.

BRIEF OF THE GEORGIA PORTS AUTHORITY AS AMICUS CURIAE.

STATEMENT OF INTEREST.

The Georgia Ports Authority (hereinafter the Authority) is a body corporate and politic created by the General Assembly of the State of Georgia and is an instrumentality of the State of Georgia and a public corporation. In the operation of public ports at various locations in the State of Georgia, it carries out its corporate purpose for the benefit of the people of Georgia, performing an essential governmental function for a public purpose and for a public benefit as a creature of the State. It has authority to acquire, construct, maintain, and operate harbors and seaports,

together with all necessary or desirable facilities therefor, including rail facilities within its properties. *Ga. Laws*, 1945, p. 464, as amended; *Ga. Code Ann.*, Chapter 98-2.

The Georgia Ports Authority operates six port terminal facilities at five Georgia cities. At Savannah, Georgia, it operates two seaport terminals, the Garden City Terminal and the Ocean Terminal, through a subsidiary organization, the Savannah State Docks and Warehouses (hereinafter the Warehouses). Both terminals have berths, sheds, warehouse and cargo handling facilities and equipment. At the Ocean Terminal, all rail interchange and switching is performed by personnel and equipment of the Central of Georgia Railroad, a privately owned Class I rail carrier. At the Garden City Terminal, rail interchange and switching is performed by personnel and equipment of the Savannah State Docks Railroad Company (hereinafter the Railroad Company), a subsidiary operation of the Georgia Ports Authority, pursuant to switching authority granted by the Interstate Commerce Commission. The organization, operating officers, employees, property and operations of the Railroad Company are separate and apart from those of the Warehouses and the Authority. Under Georgia law "... the State Ports Authority in the operation of the docks and warehouses at its Savannah terminals (is) without authority to enter into an agreement with any third party fixing the terms and conditions of the employment of personnel working for the Authority." *International Longshoremen's Assn. v. Georgia Ports Authority*, 217 Ga. 712 (1962), cert. den. 370 U.S. 922.

There is presently pending before the National Mediation Board (hereinafter the N.M.B.), File No. C-3902, a petition filed by the International Longshoremen's Association (hereinafter I.L.A.) for investigation of an alleged representation dispute among, allegedly, certain employees of the Railroad Company, but the employees described include all employees of the Authority at Savannah, Georgia, who are engaged not only in "locomotive engineering switching", but also all those engaged in "loading, unloading, warehousing, moving, storing, checking, clerking and handling of cargo" and even those "operating and maintaining equipment and facilities." See Petition for Writ of Certiorari, Appendix U (hereinafter cited as Pet., App. . .). There are only eight persons employed by the Railroad Company and they are engaged exclusively in providing rail service and are treated as being covered by railway labor legislation. There are approximately 500 persons employed by the Warehouses to handle, check, store, load and unload cargo traveling by ship, motor transport, and rail and to maintain the equipment and facilities of the Warehouses. These employees have never been treated as covered by railway labor legislation, but rather as covered by other federal laws applicable to employees. A hearing in File No. C-3902 was held in Washington, D. C. on August 13, 1969, concerning the issue of N.M.B. jurisdiction over the employees involved, and briefs of the parties have been submitted, but no decision has been rendered.

The Warehouses and the Authority contend that the N.M.B. has no jurisdiction over any employees other than those of the Railroad Company. The I.L.A. contends that N.M.B. jurisdiction extends to employees of all three entities. In the instant case pending certiorari, the N.M.B. asserted jurisdiction over similarly situated employees of the

Alabama Ports Authority. The decision of this Court in this case will substantially affect the Authority, and its subsidiaries, as well as similarly situated ports authorities of other states. For this reason, the Authority files this Brief in support of the petition for certiorari, asking that this Court grant the petition and reverse the Court below.

ARGUMENT.

A Substantial Federal Question Is Presented Which Shows The Necessity For Uniform Application Of Railway Labor Legislation Pursuant To A Determination By The Interstate Commerce Commission.

State ports authorities generally, as have Petitioners in this case, treated their railroad employees performing railroad work as being covered by various statutes relating to railway labor such as the Railway Labor Act, 45 U.S.C. 151, First (see Pet., App. F); the Railroad Retirement Tax Act, 26 U.S.C. 3231 (a), (g) (see Pet., App. J); the Railroad Retirement Act, 45 U.S.C. 228a(a) (see Pet., App. K); the Railroad Unemployment Insurance Act, 45 U.S.C. 351 (a), (b), (c); (see Pet., App. L); and the Interstate Commerce Act, 49 U.S.C. 1(3)(a) (see Pet., App. I). This treats these employees as part of the "a state within a state (which) has its own customs and its own vocabulary and lives according to rules of its own making." *California v. Taylor*, 353 U.S. 553, at 565 (1957). Because divergent rules and standards for railroads, varying with public versus private ownership, could destroy the "uniform method of dealing with the labor problems of the railroad industry" and because railroad problems are often settled on a national basis, this Court has held that such state owned *railroads* are "a vital

link in the national transportation system" and their "continuous operation is important to the national flow of commerce," thus requiring application thereto of the uniform federal scheme of railway labor legislation. *Ibid.*, at 566, 567.

Conversely, state ports authorities, like Petitioner here, have applied a totally different legislative scheme to their non-railroad employees. This scheme is a mixture of state laws on such matters as collective bargaining, civil service status, wages, etc., together with pertinent federal laws such as the Federal Insurance Contributions Act (Social Security Act), 26 U.S.C. 3121(b) (9) (see Pet., App. M); the Fair Labor Standards Act, 29 U.S.C. 201 (see Pet., App. O); and the National Labor Relations Act, 29 U.S.C. 152 (2) (see Pet., App. N). This treatment of non-railroad employees has long been implicitly or explicitly endorsed and approved by federal agencies and courts and should not be lightly disturbed in order to apply to maritime operations a specialized code of relationships, designed for and appropriate for, only a separate industry, the Nation's railroads. *Walling v. Baltimore Steam Packet Co.*, 144 F.2d 130 (4th Cir. 1944); *Allen v. Ocean S.S. Co. of Savannah*, 123 F.2d 469 (5th Cir. 1941).

The choice of schemes inherent in a decision determining Railway Labor Act applicability carries its own inherent and inevitable choice of the entire scheme of federal railway labor legislation, as the definitions of "carriers" and "employees" is closely analogous, indeed identical in effect, among these statutes. A substantial federal question regarding the scope of

railway labor legislation is presented in a context of attempted expansion of that scope to encompass employees and activities which have never been treated as subject thereto. The rationale applied to bring a state railroad within the scope of the federal railway labor legislation is inapposite to the question of coverage of state maritime facilities whose total concern is with maritime trade. In regard to these maritime facilities, there is not the problem of interconnecting carriers with differing rules nor of state enclaves where the federal writ does not run to identical activities performed by identical employee classifications.

Further, the varied state port authorities compete with one another for trade. Yet, dependent upon the vagarities of railroad ownership, one might be covered by railway labor legislation in its entire operation, while another might be free to operate under a different, and perhaps competitively advantageous, scheme. Thus, were the rail services at a state port performed solely by a privately owned railroad, there would presumably be no basis for "carrier" status of the state port. Conversely, simple operation by a subsidiary of rail facilities should not be the sole factor determining "carrier" status of all activities carried on by the parent organization. Cf. Brief of Solicitor General of the United States as Amicus Curiae, in *Pan American World Airways, Inc. v. United Brotherhood of Carpenters & Joiners of America*, 324 F.2d 217 (9th Cir. 1963), cert. den. 376 U.S. 964.

Further, the state ports authorities are subject to regulation by the Federal Maritime Commission. The jurisdiction of this Commission may easily overlap and conflict

with the claimed jurisdiction of the N.M.B. or the Interstate Commerce Commission. Some determination must be made of the jurisdictional claims, for it is clear that the jurisdiction of the I.C.C. ceases where that of another federal agency begins. *Alabama Great Southern Ry. Co. v. Federal Maritime Commission*, 379 F.2d 100 (D.C. Cir. 1967); *Swift & Co. v. United States*, 316 U.S. 216 (1942). The N.M.B. recognizes the jurisdictional limits of the I.C.C., once determined, as the limits of its jurisdiction. *Union Stockyard and Transit Company of Chicago*, Cases Nos. R-2626, C-2073, 3 N.M.B. 149 (1953), 3 N.M.B. 156 (1953). The I.C.C. and the F.M.C. have even jointly determined their respective jurisdictions in the past. *Interchange of Freight at Boston Piers*, 253 I.C.C. 703 (1942); *Interchange of Freight at Boston Terminals*, 2 U.S.M.C. 671 (1942).

The consequences of diverse determinations is shown in the case of Petitioner. Thus the N.M.B. has determined Petitioner is a "carrier" and has asserted jurisdiction over Petitioner's non-rail employees. This determination, while not completely endorsed by the court below, was found not to be "error of the *magna* or *summa* quality" which could now be reviewed and the N.M.B. result was allowed to stand. *United States v. Feaster*, 410 F.2d 1354, at 1368-1372 (5th Cir. 1969) (see Pet., App. B). On the other hand, the same court has just determined in a subsequent case that the Alabama State Docks Department is *not* a common carrier under the Interstate Commerce Act. *Central Stikstof Verkoopkantoor, N.V. v. Alabama State Docks Department*, ... F.2d .... (5th Cir., No. 24045, decided August 15, 1969). The I.C.C. has allowed state ports such as Petitioner to avail themselves of the rate adjustment complaint procedures of Section 3(1) of the Interstate Commerce Act,

49 U.S.C. 3(1), *see Alabama State Docks Department v. Alabama, Tennessee & Northern R. Co.*, 323 I.C.C. 185, while denying the same right to rail carriers, *see Denver & Rio Grande Western R. Co. v. Union Pacific R. Co.*, 287 I.C.C. 611, thus differentiating rail carriers from state maritime authorities.

Thus a substantial federal question of state-federal relationships arises under the Railway Labor Act presenting the question of federal control of a state's employment and personnel policies. The substantial interests of the several states, which both parallel and oppose one another, require a uniform code to govern the relationships of all states with all their port employees. This Court has recognized often that there is a manifest need for uniformity in the application of federal labor laws, including railway labor legislation. *International Assn. of Machinists v. Central Airlines, Inc.*, 372 U.S. 682, 691-692 (1963), reh. den. 373 U.S. 947; *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 456-457 (1957); *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776*, 346 U.S. 485, at 490-491 (1953). This Court has this year reiterated this need for uniformity in regard to state regulation of railroads clearly subject to the Railway Labor Act. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, ... U.S. ...., 22 L.Ed.2d 344 (1969), reh. den. .... U.S. ..... This uniformity can be attained only by consideration and resolution of this question by the Interstate Commerce Commission, the one tribunal whose determination, perhaps jointly made with other involved agencies, will settle all questions of jurisdiction and whose expertise to make the determination of "carrier" and "employee" status has been specifically recognized by the Congress and the Courts.

45 U.S.C. 151, First, Fifth; *Shields v. Utah-Idaho Central R. Co.*, 305 U.S. 177 (1938); *National Council of Railway Patrolmen's Unions v. Sealy*, 152 F.2d 500 (5th Cir. 1945).

Such a determination will settle a substantial and delicate question of federal-state relationships, a consideration which looms as large in the interests of the Nation as the delicate questions of international relations involved in *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963).

A Substantial Federal Question Is Presented As To Whether Congress Intended The Railway Labor Act To Apply To Non-Railroad Employees Of The Type Here Involved.

The correct approach to federal labor legislation is to consider the legislative background of the statute and to give it "a broad common-sense construction rather than a narrow one, sounding in mere logomachy." *Allen v. Ocean S.S. Co. of Savannah*, *supra*, 470. The assertion of jurisdiction by the N.M.B. over the non-railroad employees of Petitioner has been based entirely upon a literal interpretation of Section 1, First of the Railway Labor Act, 45 U.S.C. 151, First, and has been endorsed by the Court below on such a basis, *see United States v. Feaster*, *supra*, at 1368-1372. Yet this Court has consistently pointed out the dangers of a literal reading of federal labor legislation, noting that it is often the product of compromise between strong conflicting views and reiterating the warning of *Holy Trinity Church v. United States*, 143 U.S. 457, 459, that "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its

makers." *See, National Woodwork Mfgrs. Assn. v. N.L.R.B.*, 386 U.S. 612, 619 (1967), reh. den. 387 U.S. 926, and cases there cited; *Wirtz v. Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463, 468 (1968); *Textile Workers Union of America v. Lincoln Mills of Alabama, supra*, 458. Such a literal approach to the Railway Labor Act by the N.M.B. in its Case No. C-2202 was condemned by the Ninth Circuit in *Pan American World Airways v. United Brotherhood of Carpenters & Joiners of America, supra*, and by the Solicitor General in his brief as amicus curiae on the petition for certiorari therein, and certiorari therein was denied by this Court. Yet this thoroughly discredited approach to the complex questions of national labor policy has again been successfully (thus far) espoused, requiring that this Court grant certiorari to determine if such a literal approach is correct in this case.

Turning to the legislative history of the current Railway Labor Act, we find that in enacting the definition of a "carrier" in a form more expansive than predecessor definitions, Congress appears to have had a "narrow focus" aimed at a specific character of abuses and at a specific class of "isolated evils", Cf. *N.L.R.B. v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 63 (1964). The abuse sought to be corrected was the use by railroads of subsidiary organizations which the railroads controlled to perform work that otherwise would have to be performed by railroad employees and thus to escape application of railway labor legislation to large groups of employees whose employment was, in fact, under the control of the railroads through their subsidiary shells.

That this was the evil understood by Congress to be corrected is shown by the testimony of the sponsor and author of the Railway Labor Act, Joseph B. Eastman, the Federal Coordinator of Transportation, before the Senate, as contained in the *Report of Hearings of the Senate Committee on Interstate Commerce on S.3266, 73d Congress, Second Session*. In his original appearance, Mr. Eastman noted that the new "carrier" definition sought to cover such companies as refrigeration car companies and structures and equipment maintenance companies which functioned as "an integral part of the railway transportation system." The definition then proposed incorporated into the term "carrier" companies who were "operating any equipment or facilities or furnishing any service included within the definition of the terms 'railroad' and 'transportation' as defined in the Interstate Commerce Act." *Ibid.*, 10-11. George M. Harrison, testifying on behalf of 21 railway labor unions, stated their primary concern to be with broadening the Act to encompass "railroad owned and operated refrigerator car lines." *Ibid.*, 35. The railroads' spokesman, M. W. Clement, objected to the scope of the definition as bringing under the Act companies which did not belong there. *Ibid.*, 56-59. Mr. Eastman then redrafted the definition of a "carrier" in the bill to read as it now reads in pertinent part. He testified that he had so drawn it to avoid "possible conflicts with N.R.A. Codes" which covered non-rail industries and "not to go beyond carriers and their subsidiaries engaged in transportation." This narrowing of coverage to "railroad subsidiaries" was to avoid getting "into the outside field." *Ibid.*, 145-146. Congress then passed the bill containing the definition as finally proposed by Mr. Eastman.

Thus it appears probable that Congress did not intend that a company which was engaged primarily in another business should be treated as a "carrier" because it might own or control a small railroad, but rather that subsidiaries of railroad companies, performing work closely related to railroad transportation, should not escape coverage merely because of technically separate incorporation. The coverage was to flow down from a central controlling stream, not percolate upward from a minor spring. The literal approach espoused by the N.M.B., in the case of the Authority, presumably makes the status of the eight employees of the Railroad Company control the status of nearly 500 employees of the Warehouses where the Railroad Company does not control and it is not able to control or manipulate the Warehouses or the Authority. The "tail wags the dog." Such an absurd result does not appear intended by Congress nor does it evidence a rational approach to the complex problem of the industrial relations of a maritime facility.

This Court should not decline to decide the questions here presented, as did the court below, on the ground that the administrative processes have not yet been finally exhausted. Slavish deference to that essentially sound principle will only result in an extensive period of uncertainty and multitudious litigation for the many state ports authorities over whom the N.M.B. now appears to be asserting jurisdiction. Such uncertainty may itself forment labor strife. It will upset delicate balances in federal state relationships which rank as high in national priority as the relationships of the Nation to other nations. The exhaustion of the administrative process will not preclude judicial review of the ultimate question of whether the N.M.B. has acted in excess of its delegated authority. The court below found only an ab-

sence of error of sufficient magnitude to invoke its jurisdiction, leaving open for later review the question of error itself. From the history of the present case, and the pendency of similar proceeding involving other state ports authorities, the conclusion is inescapable that this precise question will ultimately be presented for determination. Additionally, there is no substantial interference with administrative discretion of decision making in now proceeding to determine "carrier" status. This determination of status by the N.M.B., in the case of Petitioner, has been made and an election directed. Only the ministerial certification of election results remains as part of the administrative process. Thus this court may review and decide the "carrier" question at a time when it will enhance the administrative process rather than impede it.

CONCLUSION.

For the reasons shown, granting of a writ of certiorari by this honorable Court is clearly justified, and the petition for a writ of certiorari should be granted to settle the substantial federal questions involved.

Respectfully submitted,

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October, 1969

CERTIFICATE OF SERVICE.

I, Erle Phillips, one of the attorneys for the Georgia Ports Authority, amicus curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the .... day of October 1969, I served copies of the foregoing Brief of the Georgia Ports Authority as amicus curiae on the several parties thereto, as follows:

On the United States and on Warren S. Lane, as Mediator, National Mediation Board, by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to Charles S. Whitespunner, Esquire, United States Attorney for the Southern District of Alabama, at Room 311, Federal Building, Mobile, Alabama, and by mailing a copy in a duly addressed envelope with air mail postage prepaid to The Solicitor General, Department of Justice, Washington, D. C. 20530.

On Houston H. Feaster, individually and as Director Alabama State Docks Department, and on the State of Alabama by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to Willis C. Darby, Jr., Esquire, Post Office Box 2565, Mobile, Alabama 36601, and by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to Hon. MacDonald Gallion, Attorney General of the State of Alabama, Montgomery, Alabama.

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